



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 14, 1998

The Honorable Ben W. "Bud" Childers  
Fort Bend County Attorney  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

Letter Opinion No. 98-060

Re: Whether proceeds of bonds approved by voters  
for improvements to a city's existing civic center  
may be used for construction of a new civic and  
convention center and related questions (RQ-1114)

Dear Mr. Childers:

On behalf of two city council members of the City of Rosenberg (the "city"), you request an opinion from this office with respect to the city's construction of a new civic and convention center. You first ask whether the city may use proceeds of bonds approved by the voters for improvements to the city's existing civic center (the "Bonds") for construction of a new civic and convention center. Because the voters approved issuance of the Bonds only to improve the city's existing civic center, we conclude proceeds of the Bonds may not be used to construct a new civic and convention center. Your second and third questions ask us to review and construe a contract between the city and Bass Construction Co., Inc. with respect to the new civic and convention center. We do not answer these questions because this office does not review or construe contracts in an attorney general opinion. However, for your guidance, we discuss in general terms the issues raised in your questions.

Documents relating to issuance of the Bonds and a brief submitted on behalf of the city provide the following background to your first question. By an ordinance adopted June 15, 1993, the city ordered that an election be held on August 14, 1993, to submit to the voters several propositions authorizing issuance of bonds payable from ad valorem property taxes. Proposition Number Three authorized issuance of the Bonds and provided in relevant part as follows:

SHALL THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS,  
BE AUTHORIZED TO ISSUE AND SELL AT ANY PRICE OR PRICES  
THE BONDS OF THE CITY IN THE AMOUNT OF \$300,000 . . . FOR  
THE PURPOSE OF THE *CONSTRUCTION OF IMPROVEMENTS TO  
THE CITY'S CIVIC CENTER* AND TO LEVY TAXES UPON ALL  
TAXABLE PROPERTY WITHIN THE CITY ANNUALLY SUFFICIENT  
TO PAY THE INTEREST ON THE BONDS AS IT ACCRUES AND TO  
CREATE A SINKING FUND TO PAY THE PRINCIPAL OF THE BONDS  
AS IT MATURES? [Emphasis added].

The city gave notice of the election by posting and publishing the election ordinance prior to the election. On August 14, 1993, the city's electorate approved Proposition Number Three, among others, and by an ordinance adopted June 18, 1996, the city authorized issuance and sale of the Bonds as part of the city's \$2,000,000 General Obligation Bonds, Series 1996 (the "Series 1996 Bonds"). Presumably, thereafter the city delivered the Series 1996 Bonds to the purchasers and received in exchange the purchase price, *i.e.*, the proceeds. Subsequently, the city council was informed that renovating the civic center would cost \$1,058,700 and, more importantly, that a new civic center building could be built for the same amount. In response, the city council requested a citizens' committee to develop alternatives with respect to a new civic center building. On November 5, 1996, the city council received and approved the committee's recommendation to construct a new civic and convention center rather than renovate the city's existing civic center. The city now proposes to use the unexpended proceeds allocable to the portion of the Series 1996 Bonds authorized and sold for improvements to the city's existing civic center in the principal amount of \$300,000 for construction of the new civic and convention center.

It is a well-established principle that proceeds of bonds approved by the electorate may only be expended for the purpose for which they were approved.<sup>1</sup> They may not be expended for an additional or different purpose.<sup>2</sup> This is because the ordinance ordering a bond election and establishing the purpose for which bonds will be issued becomes a contract with the voters once the voters approve the bonds.<sup>3</sup> A city is required to include in the bond proposition, in the election order and in the notice of election, the purposes for which bonds payable from ad valorem property taxes will be issued, because the electorate is entitled to know in advance the particular purpose for which its taxes levied pursuant to the election will be used.<sup>4</sup> Accordingly, the purpose of the bonds must be stated in such a way as to "fairly and fully apprise the voters of it."<sup>5</sup> No particular form is prescribed for stating the purpose, and the way it is stated is left to the discretion of the city's governing body.<sup>6</sup> Thus when an election ordinance states only the general purpose for which bonds will be issued and does not specify particular projects for which the proceeds will be used, the governing body is free to exercise its discretion in expending the funds for projects within the scope

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<sup>1</sup>*Black v. Strength*, 246 S.W. 79 (Tex. 1922); *Moore v. Coffman*, 200 S.W. 374 (Tex. 1918); *see also* V.T.C.S. arts. 703a, 703b (authorizing new election to use unexpended bond proceeds for additional or different purpose).

<sup>2</sup>*See supra* note 1.

<sup>3</sup>*Black*, 246 S.W. at 80-81; *Moore*, 200 S.W. at 374-75; *Devorsky v. La Vega Indep. Sch. Dist.*, 635 S.W.2d 904, 908 (Tex. App.--Waco 1982, no writ); *Inverness Forest Improvement Dist. v. Hardy St. Investors*, 541 S.W.2d 454, 460 (Tex. Civ. App.--Houston [1st Dist.] 1976, writ ref'd n.r.e.); *Blanton v. City of Houston*, 350 S.W.2d 947, 951 (Tex. Civ. App.--Houston 1961, writ granted), *judgm't vacated & cause dismissed on other grounds*, 353 S.W.2d 412 (Tex. 1962).

<sup>4</sup>*See* V.T.C.S. arts. 703, 704; *Moore*, 200 S.W. at 374.

<sup>5</sup>*Moore*, 200 S.W. at 374.

<sup>6</sup>V.T.C.S. art. 703; *Moore*, 200 S.W. at 374.

of the general purpose.<sup>7</sup> On the other hand, if the election ordinance specifies the projects for which bond proceeds will be used, the proceeds can only be used for those projects and cannot be applied to different projects.<sup>8</sup>

The city's electorate approved and the city issued the Bonds to improve the city's existing civic center. The Bond proposition in the election order and in the notice of the election stated that the Bonds were to be issued for construction of "improvements to the city's civic center."<sup>9</sup> The ordinance pursuant to which the city authorized and sold the Series 1996 Bonds stated the Bonds were being issued and sold for the construction of "improvements to the city's civic center."<sup>10</sup> The city clearly had authority to submit a bond proposition to issue bonds to construct a new civic center, renovate its existing civic center, or both *i.e.*, to keep its options open. However, the city exercised that authority by stating in the election order and in the notice of election that the Bonds would be issued to improve the existing civic center. The narrow wording foreclosed other options. Construction of improvements to the existing civic center is the project the city's electorate approved.

A brief submitted on behalf of the city contends that the city has discretion to use the Bond proceeds for construction of the new civic and convention center notwithstanding that the Bonds were approved to renovate the existing civic center.<sup>11</sup> The brief relies on *Barrington v. Cokinos* and *Lewis v. City of Fort Worth* for the proposition that a city's governing body retains discretion to use proceeds of bonds for a purpose that is different from that approved by the voters. In particular, the brief directs us to the reliance in these cases on the principle that "in instances where the law visits upon a governing body the duty to exercise its sound judgment and discretion, courts have no right

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<sup>7</sup>*Barrington v. Cokinos*, 338 S.W.2d 133, 143 (Tex. 1960); *Hudson v. San Antonio Indep. Sch. Dist.*, 95 S.W.2d 673, 674 (Tex. 1936); *Lewis v. City of Fort Worth*, 89 S.W.2d 975, 978 (Tex. 1936); *Davis v. Duncanville Indep. Sch. Dist.*, 701 S.W.2d 15, 18 (Tex. App.—Dallas, writ dismissed). Even in such a case, however, the governing body must act reasonably. *Barrington*, 338 S.W.2d at 143; *Lewis*, 89 S.W.2d at 978.

<sup>8</sup>*Black*, 246 S.W. at 80-81; *Moore*, 200 S.W. at 374-75; *Devorsky*, 635 S.W.2d at 908; *Inverness Forest Improvement Dist.*, 541 S.W.2d at 460; *Blanton*, 350 S.W.2d at 951.

<sup>9</sup>See ROSENBERG, TEX., ORDINANCE NO. 93-09 (1993) (Ordinance Calling Bond Election, adopted June 15, 1993); Notice of Election published July 15, 1993 and July 22, 1993 in the *Herald Coaster*. You do not indicate and we do not consider any other statements made or actions taken by the city regarding the use of the Bond proceeds prior to the election on which the voters may have relied on in approving the Bonds. See, e.g., *Devorsky*, 635 S.W.2d at 908 (if governmental entity induces voters to approve bonds by making certain representations, it is bound by those representations).

<sup>10</sup>See ROSENBERG, TEX., ORDINANCE NO. 96-15 (1996) (Ordinance Authorizing the Issuance of City of Rosenberg, Texas General Obligation Bonds, Series 1996, adopted June 18, 1996).

<sup>11</sup>See Memorandum Brief from Frank E. McCreary, Vinson & Elkins, L.L.P., to Sarah J. Shirley, Chair, Opinion Committee (May 5, 1998).

to interfere so long as such body acts lawfully,”<sup>12</sup> to uphold particular expenditures of bond proceeds. We do not believe that this legal principle gives a governing body unlimited discretion to determine how bond proceeds will be used *after* it has limited that discretion by specifying a particular project for which the proceeds will be used in the bond proposition approved by the voters. By definition, a governing body is no longer vested with the discretion to determine the project for which proceeds will be used if it has previously exercised that discretion.

In *Barrington v. Cokinos*, 338 S.W.2d 133 (Tex. 1960), the voters had approved issuance of bonds for the purpose of, among others, “paying part of the cost of the project for the elimination of railroad grade crossings from the public streets and highways in the City of Beaumont, and work and expenses incident to such separation of grades.”<sup>13</sup> The Texas Supreme Court upheld the City of Beaumont’s use of the bond proceeds to remove a span of railroad track from its present location to another and to provide a new railroad right-of-way.<sup>14</sup> Observing that the proposition in question was broad in scope, the court noted that at the time of the bond election, the City of Beaumont had no definite plans to effectuate the improvements contemplated by the bond proposition.<sup>15</sup> Therefore, the court stated, neither the City of Beaumont nor the voters could know the particular items for which the bond proceeds would be spent.<sup>16</sup> The court then concluded:

Evidently it was for this reason that the proposal was submitted in rather general terms, and approval of the same by the electorate necessarily left to the sound judgment and discretion of the governing body the devising of a program or plan for the elimination of grade crossings which would be advantageous to the municipality and its citizens.<sup>17</sup>

In *Lewis v. City of Fort Worth*, 89 S.W.2d 975 (Tex. 1936), the voters approved the bonds in question “for the purpose of constructing, building, equipping and improving pleasure grounds, parks and playgrounds . . . , and for securing and acquiring the necessary lands and sites therefor.”<sup>18</sup> The City of Fort Worth proposed to use a portion of the proceeds to build and equip an auditorium, a coliseum, livestock exhibition building, an agricultural, livestock and commercial exhibits building, necessary police and fire protection buildings, and other buildings necessary to

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<sup>12</sup>*Lewis*, 89 S.W.2d at 978; *Barrington*, 338 S.W.2d at 142 (quoting *Lewis*).

<sup>13</sup>*Barrington*, 338 S.W.2d at 142.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 143.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Lewis*, 89 S.W.2d at 978.

accommodate patrons of the exhibition grounds.<sup>19</sup> The *Lewis* court held that expenditure of the bond proceeds for these particular items were not "foreign" to the purposes for which the bonds were voted.<sup>20</sup> The court stated:

[W]e think the conducting of shows, rodeos, fairs, expositions, and other amusements intended by the city on the grounds and in the buildings contemplated is in harmony with the general purposes of pleasure grounds, parks, and playgrounds. Generally speaking, the term "park" now has a very broad meaning. This is especially true as applied to municipal parks. We now understand a municipal park to be a place where the public generally may go for various kinds of recreation and amusement.<sup>21</sup>

The *Lewis* court concluded with a discussion of cases that had determined "parks" to broadly encompass the type of facilities for which the City of Fort Worth contemplated spending the bond proceeds.<sup>22</sup>

*Barrington* and *Lewis* involved broad bond purposes described in general terms. Because the propositions did not limit specifically how the proceeds would be spent, the governing body in each instance retained its discretion to determine the specific items for which the bond proceeds would be expended to accomplish the general purpose. Accordingly, the governing body could and did exercise this discretion to decide specifically how the proceeds would be spent as long as the particular expenditures were within the scope of the general purposes approved by the voters.

The *Barrington* and *Lewis* decisions are inapposite. The City of Rosenberg proposition specified the purpose of the Bonds, *i.e.*, construction of improvements to the city's civic center. Clearly, renovation of the existing civic center does not encompass construction of a new civic and convention center. Although the city could have submitted a bond proposition broader in scope so as to reserve to the city council discretion to later determine whether to renovate the existing civic center or to construct a new facility, it did not. By limiting the purpose of the Bonds to renovation of the existing civic center, the city council exercised this discretion before the election. It cannot exercise now a discretion it no longer possesses to use the Bond proceeds to construct a new civic and convention center, a purpose which the electorate may not have approved.<sup>23</sup>

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<sup>19</sup>*Id.* at 977.

<sup>20</sup>*Id.* at 978.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* at 978-79.

<sup>23</sup>*See Black*, 246 S.W. at 81 (election order binds governmental body; contrary rule would permit governmental body to apply money voted for one purpose to another for which it would not have been voted if people had been  
(continued...)

Alternatively, the brief appears to argue that the city may abandon the civic center renovation and use the Bond proceeds for a new civic and convention center. The brief cites *Hudson v. San Antonio Independent School District* in support of its argument. *Hudson* does not support it.

In *Hudson v. San Antonio Independent School District*, 95 S.W.2d 673 (Tex. 1936), Hudson sought to restrain the school district from spending proceeds of school bonds for other than construction of a high school building at a particular site.<sup>24</sup> The voters had approved the bonds in question "for the purpose of constructing, remodeling, equipping and repairing public free school buildings and the purchase of necessary sites therefor."<sup>25</sup> Two days before the election, however, the board of trustees entered in its minutes an "official statement" that if the bonds were approved, the board would use \$750,000 of the proceeds to build a new senior high school at "Aster and South Pine streets."<sup>26</sup> Hudson contended that the board was bound by its official statement to build the high school at that location.<sup>27</sup> The *Hudson* court stated that while the election order and notice were in general terms and gave the school board discretion in expending the proceeds for legitimate projects, the official statement had the effect of pledging to the voters that the proceeds would be used for particular projects.<sup>28</sup> However, the *Hudson* court determined, the voters had not relied on the subsequent official statement in voting to authorize the school building bonds.<sup>29</sup> Therefore, the court concluded, the official statement would not be enforced, and the school board was not limited to using the bond proceeds for the high school.<sup>30</sup> Additionally, the court stated, conditions had so materially changed since the bonds were voted that building the high school building would be unwise and unnecessary expenditure of school funds.<sup>31</sup> Accordingly, the court also concluded, the school board had not acted arbitrarily in abandoning the high school project.<sup>32</sup>

Nothing in the *Hudson* court's opinion indicates that because the school board of trustees could reasonably abandon the particular high school project, it had discretion to use the bond

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<sup>23</sup>(...continued)  
apprised in advance).

<sup>24</sup>*Hudson*, 95 S.W.2d at 673.

<sup>25</sup>*Id.* at 673.

<sup>26</sup>*Id.* at 674.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at 675.

<sup>32</sup>*Id.*

proceeds for projects different from those approved by the voters. The board of trustees was clearly limited to expending the bond proceeds for constructing, remodeling, equipping, and repairing school buildings and acquiring the necessary sites. While such purposes were much broader than the particular high school building project the school board had abandoned, they were obviously not different or additional purposes given that these were precisely the purposes stated in the bond proposition and approved by the voters.

Although *Hudson* does not authorize use of proceeds of bonds, which the voters approved for a particular purpose, for a different purpose, Texas Civil Statutes, articles 703a and 703b do if the new purpose is approved at a subsequent election. Articles 703a and 703b apply to all cities, including home-rule cities, that have issued, sold, and delivered bonds for a specific purpose, which purpose has been accomplished by other means or has been abandoned, and all or portion of the bond proceeds remain unexpended. These provisions authorize a city's governing body to hold an election on the question whether the unexpended proceeds may be expended for other or different purposes described in the election ordinance and notice.<sup>33</sup> If a majority of the voters approve use of the proceeds for the newly designated purpose, a city may expend the proceeds for that purpose.<sup>34</sup> Thus, the city may use the Bond proceeds to construct the new civic and convention center if such use is approved by the voters at an election held for that purpose. You do not indicate and we do not understand the city to have held a new election to authorize use of the Bond proceeds for construction of the new civic and convention center.

You next ask if "the contract as attached with Bass Construction Company violate[s] the competitive bidding requirements of Section 252 of the Local Government Code." Your request letter includes a copy of a contract entitled "Standard Form of Agreement Between Owner and Construction Manager," between the City of Rosenberg and Bass Construction Co., Inc., for the "[c]onstruction of 18,700 s.f. Rosenberg Civic & Convention Center" (the "contract"). You do not state the purpose of, or describe the work Bass will perform under the contract. You ask us, in essence, to review and determine whether the contract is exempt from the competitive bidding procedures of chapter 252 of the Local Government Code as a contract for personal or professional services. This office does not construe contracts in an attorney general opinion.<sup>35</sup> Nor does it review particular contracts and determine whether they satisfy specific statutory requirements.<sup>36</sup> While we

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<sup>33</sup>V.T.C.S. arts. 703a, 703b.

<sup>34</sup>*Id.*

<sup>35</sup>*See, e.g.,* Attorney General Opinions DM-383 (1996) at 2 (interpretation of contract not appropriate function for opinion process), DM-192 (1992) at 10 ("This office, in the exercise of its authority to issue legal opinions, does not construe contracts.").

<sup>36</sup>*See* Attorney General Opinion JM-697 (1987) at 6 ("[t]he review of contracts is not an appropriate function for the opinion process"); *see also* Attorney General Opinions DM-383 (1996) at 2; DM-138 (1992) at 3 ("It is beyond the purview of the opinion process to review particular contracts and to determine whether they satisfy specific statutory requirements.").

cannot advise you whether the contract is exempt from the competitive bidding procedures as a personal or professional service contract, we can advise you in general terms.

Chapter 252 of the Local Government Code (the "act") sets out the competitive bidding and competitive proposal procedures generally applicable to a municipality. A municipality must comply with the act's competitive sealed bidding or competitive sealed proposals procedures before entering into a contract that requires expenditure of municipal funds in excess of \$15,000.<sup>37</sup> Local Government Code section 252.022 exempts certain contracts from these procedures, including a contract "for personal, professional, or planning services."<sup>38</sup>

Section 252.022 does not define "personal" or "professional" services for the purposes of the exemption. Several attorney general opinions, however, have attempted to define the scope of this exemption. In particular, Attorney General Opinions MW-530 and JM-940 address whether services of a construction manager are within the personal or professional services exemption.<sup>39</sup>

In Attorney General Opinion MW-530, this office concluded that a contract for the services of a construction manager was within the personal services exception to the competitive bidding requirements applicable to counties. The duties of the construction manager as described included: representing, advising, and consulting with the county during the construction period; overseeing, scheduling, and coordinating contractors' work; and reviewing contractors' applications for payment and making final recommendations to the architect on these payments.<sup>40</sup> This office determined that these were personal services because they were performed personally by a particular individual for the benefit of another, and they involved the intellectual or manual labor of the performing individual.<sup>41</sup> Because the services were within the personal services exception, Attorney General Opinion MW-530 did not consider whether they were also within the professional services exception.<sup>42</sup>

Similarly, in Attorney General JM-940 this office determined that a contract for the services of a construction management consultant was exempt from the competitive bidding procedures applicable to a school district as a contract for professional services. The overall function of a construction management consultant, as described by the school district, was to control time and

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<sup>37</sup>Local Gov't Code § 252.021(a).

<sup>38</sup>*Id.* § 252.022(a)(4).

<sup>39</sup>*See also* Attorney General Opinion JM-282 (1984) (construction management contracts of state universities).

<sup>40</sup>Attorney General Opinion MW-530 (1982) at 2.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.* at 3.



cost on behalf of the "owner/school district" during the construction process.<sup>43</sup> Accordingly, the duties included: establishing a project budget and accounting system; pre-qualifying and interviewing architects and engineers and advising the school district on the final selection; organizing the project's design phase and establishing a schedule from the design phase to completion of construction; advising and consulting with the school district on materials, construction methods, and arrangement of the construction contract package; managing the bidding and negotiation process, awarding contracts, and coordinating the different contractors; and supervising the work.<sup>44</sup> Because these duties "require a high level of knowledge, experience, and skill consistent with the standards of professionalism," the attorney general concluded they qualified as professional services for the purposes of the competitive bidding exemption.<sup>45</sup> The attorney general reiterated that contracts for construction work on projects that are the subject of the consulting contract must comply with the competitive bidding requirements applicable to the school district.<sup>46</sup>

In sum, a municipal contract in excess of \$15,000 for the services of a construction manager may be exempt from the act's competitive bidding procedures as a personal or professional services contract if the services relate to establishing and managing the construction process on behalf of the municipality rather than constructing a project. Contracts for construction of the project that is the subject of the construction management contract would be subject to the competitive bidding procedures of the act. If the contract between the city and Bass is a contract for services relating to establishing and managing the construction process on behalf of the city rather than constructing the project itself, it may be exempt from the competitive bid procedures of the act as a professional or personal services contract. Whether it is indeed such a contract is a determination we cannot make in the opinion process.

Finally, you ask whether the contract between the city and Bass "violate[s] the Checks and Balances in a Contract for Construction outlined by Attorney General Opinion JM 1189 and is [it] illegal as a design/build contract." Again, you ask us to review the contract and determine whether it is a design/build contract. Assuming it is a design/build contract, you ask us if it is "illegal" without specifying a particular basis for your concern. As stated before, this office does not construe nor review particular contracts. It is also beyond the scope of an attorney general opinion to speculate as to all the bases on which the contract may violate the law assuming it is a design/build contract. In this regard, we note that Attorney General Opinion JM-1189 does not set out a legal criterion of checks and balances for construction contracts as your question suggests. While we cannot make the determinations you ask, we briefly review Attorney General Opinion JM-1189 for your guidance.

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<sup>43</sup>Attorney General Opinion JM-940 (1988) at 2.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.* at 3, 4.

<sup>46</sup>*Id.* at 3-4.

In Attorney General Opinion JM-1189, this office described a design/build contract as a contract in which an "owner contracts with a single party for both the design and construction of the entire project" in contrast to the traditional arrangement in which the owner contracts separately with an architect and a contractor.<sup>47</sup> The entity contracting with the owner undertakes either to design and build the entire project utilizing funds provided by the owner and present the completed facility to the owner or provide the completed facility to the owner on a "turn-key" basis.<sup>48</sup> A turn-key project is one in which the contractor agrees to complete the project, assuming responsibility for the project design and all risks unless waived or limited by contract.<sup>49</sup> At the time of occupancy, all that the purchaser needs to do is "turn the key" to open the door.<sup>50</sup>

In discussing design/build contracts, this office noted in JM-1189 some of their disadvantages. In describing one of the disadvantages, the elimination of the arms-length relationship between the design professional and the builder, the opinion refers to the "checks- and-balance" mechanism inherent in traditional contracts:

The traditional contracting method delegates various functions to different contractors, creating what has been called a 'healthy tension' and installing a check-and-balance mechanism into the process. By combining the design and construction functions, the design/build contract is said to make the architect less of an agent for the owner since he is essentially acting in partnership with the builder.<sup>51</sup>

Attorney General Opinion JM-1189 merely describes the checks-and-balance mechanism inherent in traditional contracts that does not exist in a design/build contract. The opinion does not set out a legal criterion of checks-and-balances for construction contracts as your question suggests.

Lastly, this office in Attorney General Opinion JM-1189 concluded that a commissioners court does not have authority to contract for the construction of public works under a design/build procedure when the resulting contract is awarded pursuant to competitive bidding and includes architectural or engineering services as a component.<sup>52</sup> Attorney General Opinion JM-1189 reached this conclusion because the Professional Services Procurement Act prohibits a governmental entity,

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<sup>47</sup>Attorney General Opinion JM-1189 (1990) at 2 (citing Hal G. Block, *As the Walls Came Tumbling Down: Architects' Expanded Liability Under Design-Build/Construction Contracting*, 17 J. MARSHALL L. REV. 1 (1984)).

<sup>48</sup>Attorney General Opinion JM-1189 (1990) at 2-3.

<sup>49</sup>*Id.* at 3 n. 1.

<sup>50</sup>*Id.*

<sup>51</sup>*Id.* at 3 (citations omitted).

<sup>52</sup>*Id.* at 12.

including a city or county, from obtaining architectural or engineering services by competitive bidding.<sup>53</sup> Accordingly, as a general matter, a municipality would not have the authority to contract for construction of a project under a design/build procedure if the contract is awarded pursuant to competitive bidding and includes architectural or engineering components. We note, however, that even assuming that the contract is a design/build contract, your request indicates that it was not awarded on the basis of competitive bidding.

### S U M M A R Y

Proceeds of bonds approved by the voters for improvements to a city's existing civic center may not be used for construction of a new civic and convention center unless approved by the voters at a subsequent election held for that purpose pursuant to V.T.C.S. articles 703a or 703b.

Yours very truly,



Sheela Rai  
Assistant Attorney General  
Opinion Committee

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<sup>53</sup>See Gov't Code §§ 2254.002, .003.